

## **REMARKS**

This present Response is being filed in reply to the Office Action dated January 8, 2008. Applicant requests a three (3) month extension of time to extend the period of response to and including July 8, 2008.

By the present amendment, claims 1-36 are canceled without prejudice and new claims 37-47 are added. Claims 37-47 are pending in the application. Support for the new claims can be found throughout the specification and drawings, including the claims as originally filed. No new matter has been added. The cancellation of the claims should in no way be construed to be in acquiescence to any of the rejections. The cancellation of the claims is being made solely to expedite prosecution of the above-identified patent application. Applicants reserve the option to further prosecute the same or similar claims in the present or subsequent patent applications.

### ***Rejection Pursuant to 35 U.S.C. § 103(a)***

The Office Action rejected claims 1-14 and 16-33 pursuant to 35 U.S.C. § 103(a) as being unpatentable over Pagliuca (US Patent Application Publication 2003-0073998) in view of Chin (US Patent Application Publication 2005-0065517). The Office Action rejected claim 15 pursuant to 35 U.S.C. § 103(a) as being unpatentable over Pagliuca (US Patent Application Publication 2003-0073998) in view of Chin (US Patent Application Publication 2005-0065517) and in further view of Nguyen et al. (US Patent Application Publication 2004-0215190).

By the present amendment, claims 1-14 and 16-33 are canceled rendering moot the rejection of these claims under 35 U.S.C. § 103(a).

### ***New Claims 37-47***

New independent claim 37 recites a minimally invasive surgical method including inserting a retractor having a plurality of expandable retractor blades into a first incision, expanding the retractor by separating the retractor blades, advancing a first anchor through the expanded retractor to a first anchor site on a first vertebra, advancing a second anchor through the expanded retractor to a second anchor site on a second vertebra adjacent the first vertebra, and advancing the first end of the spinal rod

subcutaneously from the expanded retractor to a third anchor . Claims 38-46 depend from claim 37.

New independent claim 47 recites a minimally invasive surgical method including positioning a first anchor and second anchor in a first vertebra and a second vertebra, respectively, through a retractor, percutaneously positioning a third anchor in a third vertebra adjacent one of the first vertebra and the second vertebra through a percutaneous incision distinct from the first incision, advancing the first end of a spinal rod subcutaneously from the first incision to the third anchor, and coupling the spinal rod to the first anchor, the second anchor, and the third anchor.

The prior art of record, including Pagliuca and Chin, fail to teach or suggest the minimally invasive surgical methods recited in new claims 37-47.

***Conclusion***

In view of the remarks set forth above, it is respectfully submitted that this application is in condition for allowance. Accordingly, allowance is requested. If there are any remaining issues or the Examiner believes that a telephone conversation with the Applicant's attorney would be helpful in expediting the prosecution of the application, the Examiner is invited to call the undersigned at (508) 880-8488.

Respectfully submitted,

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Date: July 8, 2008